

MAR 15 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

DANIEL PAYNE,

Petitioner - Appellant,

v.

ROBERT BAYER; et al.,

Respondents - Appellees.

No. 04-15728

D.C. No. CV-01-00120-ECR/VPC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Nevada state prisoner Daniel Payne appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1995 Alford plea conviction for sexual assault on a child under the age of 14. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we dismiss the appeal.

AEDPA limits the scope of review in a habeas case to those issues identified in the certificate of appealability (“COA”). *See Nardi v. Stewart*, 354 F.3d 1134, 1137 (9th Cir. 2004). Neither party has addressed the issue specified in this court’s COA. Accordingly, Payne has waived the only issue certified for review, and we dismiss his appeal. *See Sophanthavong v. Palmateer*, 378 F.3d 859, 872 (9th Cir. 2004) (“[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.”).¹

DISMISSED.

¹ The issues Payne raises in his brief are outside the COA, and he has failed to request that we broaden the COA under the procedures set forth in Ninth Circuit Rule 22-1(e). In any event, we decline to certify those issues because Payne has not made a “substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e).